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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW MacCORMACK, HOWARD GURNEY, WILLIAM
ROBBINS, and FABRIZIO ROVATI

Appeal 2008-3215
Application 09/239,907
Technology Center 2400¹

Decided²: February 4, 2009

Before KENNETH W. HAIRSTON, MAHSHID D. SAADAT
and KARL D. EASTHOM, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

¹ The Examiner's Answer issued from Group 2600 but the Examiner is now in Group 2400.

² The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. §1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Appellants request a rehearing (hereinafter “Reh’g”) pursuant to 37 C.F.R. § 41.52 of a decision affirming the Examiner’s rejections of claims 1, 3-10, 21-42, 45 and 46, and reversing the Examiner’s rejection of claims 11 and 13-20 by the Board of Patent Appeals and Interferences, (hereinafter “Dec.”).³

As Appellants correctly note (Reh’g 1-2), we did not sustain the Examiner’s anticipatory rejection under 35 U.S.C. § 102(e) of claims 39-41 based on Dokic (Dec., 10-13), even though our “Decision” and “Conclusion” sections erroneously indicated otherwise. Accordingly, as Appellants also note, because claim 42 depends from claim 39, we also should not have sustained the Examiner’s obviousness rejection of claim 42 under 35 U.S.C. § 103 (a), based on Dokic and Bestler. (*See* Dec. 18).⁴

Consequently, our “Conclusion” section also should have indicated that we did not sustain the Examiner’s rejections of claims 39-42, and similarly, our “Decision” section also should have indicated that we reversed the Examiner’s decision with respect to those claims (in addition to our indication that we reversed the Examiner’s decision rejecting claims 11, 13 and 20), as Appellants correctly note. (Reh’g. 1, 3). Therefore, Appellants’ request that we reconsider our decision is hereby granted, and our decision is

³ Mailed October 31, 2008.

⁴ As stated in our “Analysis” section: “Claim 42 depends from claim 39. The Examiner does not contend . . . that the features of claim 39 that are missing from Dokic, as discussed above, are taught, suggested or motivated by Bestler.” (Dec. 18, quoting Reply Br. 5).

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modified to reflect the above discussed corrections. Accordingly, our indication of the affirmance of claims 39-42 is withdrawn.

REHEARING
GRANTED

gvw

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